

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Stephen P. Kelly,

Case No. 23-cv-3087 (JRT/TNL)

Plaintiff,

v.

REPORT AND RECOMMENDATION

Hilltop Inn Motel Inc., Gordon H. Eibenstein, Jane Doe a/k/a Christi, Lynn Johnson, Beth Ann Winter, and Paul M. Malone,

Defendants.

In an order dated November 14, 2023, this Court ordered Plaintiff Stephen P. Kelly to either (1) pay this action’s filing fee, or (2) submit a new application to proceed *in forma pauperis*. [See ECF No. 4 at 2–3.] The Court gave Kelly 21 days—that is, until December 5, 2023—to perform one of the two tasks, failing which the Court would recommend dismissing this action without prejudice, under Federal Rule of Civil Procedure 41(b), for failure to prosecute. [See *id.*]

That deadline has now passed, and Kelly has failed to comply with the Court’s instruction. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. See, e.g., *Henderson v. Renaissance Grand Hotel*, 267 F. App’x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a

plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: December 15, 2023

s/ Tony N. Leung
Tony N. Leung
United States Magistrate Judge
District of Minnesota

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NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).